

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

UNITED STATES OF AMERICA

v.

JOHN J. TULIP

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CASE NO. 3:05-cr-114-J-25MCR

PLEA AGREEMENT

A. **Particularized Terms**

Pursuant to Fed. R. Crim. P. 11(e), the United States of America, by Paul I. Perez, United States Attorney for the Middle District of Florida, and the defendant, JOHN J. TULIP, and the attorney for the defendant, LISA CALL, Esq., mutually agree as follows:

1. **Counts Pleading To**

The defendant shall enter a plea of guilty to Counts One and Twelve of the Indictment. Count One charges the defendant with knowingly persuading, inducing or using a minor to engage in sexually explicit conduct for the purpose of producing a visual depiction which has actually been transported in interstate or foreign commerce, in violation of 18 U.S.C. § 2251(a). Count Twelve charges the defendant with knowingly transporting or causing to be transported in foreign commerce child pornography, in violation of 18 U.S.C. §§ 2252(a)(1) and 2.

Defendant's Initials


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2. Maximum Penalties

Count One carries a minimum mandatory term of imprisonment of ten (10) years up to twenty (20) years imprisonment, \$250,000 in fines, or both, a term of supervised release of up to three (3) years, and a special assessment of \$50 per felony count for offenses committed prior to April 24, 1996, \$100 per felony count thereafter; for organizations the amounts are "\$200" and "\$400" respectively, said special assessment to be due on the date of sentencing. With respect to certain offenses, the Court shall order the defendant to make restitution to any victim of the offenses, and with respect to other offenses, the Court may order the defendant to make restitution to any victim of the offense(s), or to the community, as set forth below. With respect to supervised release, should the defendant violate any of the terms of supervised release upon release from incarceration, if any, the defendant could receive an additional term of imprisonment of two (2) years.

Count Twelve carries a maximum sentence of fifteen (15) years imprisonment, \$250,000 in fines, or both, a term of supervised release of up to three (3) years, and a special assessment of \$50 per felony count for offenses committed prior to April 24, 1996, \$100 per felony count thereafter; for organizations the amounts are "\$200" and "\$400" respectively, said special assessment to be due on the date of sentencing. With respect to certain offenses, the Court shall order the defendant to make restitution to any victim of the offenses, and with respect to other offenses, the Court may order the defendant to make restitution to any victim of the offense(s), or to the community, as set forth below. With respect to supervised release, should the Defendant's Initials 

defendant violate any of the terms of supervised release upon release from incarceration, if any, the defendant could receive an additional term of imprisonment of two (2) years.

The cumulative sentence that the defendant could receive is a minimum mandatory term of imprisonment of ten (10) years up to thirty-five (35) years imprisonment, \$500,000 in fines, or both, and \$200 in special assessments. With respect to supervised release, should the defendant violate any of the terms of supervised release upon release from incarceration, if any, the defendant could receive an additional term of imprisonment of four (4) years.

3. Elements of the Offense

The defendant acknowledges understanding the nature and elements of the offense with which defendant has been charged and to which defendant is pleading guilty. The elements of Count One are:

First: That the defendant knowingly employed, used, persuaded, induced, enticed or coerced a minor to engage in any sexually explicit conduct;

Second: That the purpose of such conduct was to produce a visual depiction of such conduct;

Third: That the visual depiction has actually been transported in interstate or foreign commerce or mailed.

The elements of Count Twelve are:

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First: That the defendant knowingly transported and shipped, or caused to be transported and shipped, a visual depiction in interstate or foreign commerce by any means, including by computer;

Second: That the production of such visual depiction involved the use of a minor engaging in sexually explicit conduct;

Third: That such visual depiction is of a minor engaged in sexually explicit conduct; and


Fourth: That the defendant knew that at least one of the performers in such visual depiction was a minor and knew the visual depiction was of such minor engaged in sexually explicit conduct.

4. Counts Dismissed

At the time of sentencing, the remaining counts against the defendant, Counts Two through Eleven, will be dismissed pursuant to Fed. R. Crim. P. 11(c)(1)(A).

5. No Further Charges

If the Court accepts this plea agreement, the United States Attorney's Office for the Middle District of Florida agrees not to charge defendant with committing any other federal criminal offenses known to the United States Attorney's Office at the time of the execution of this agreement, related to the conduct giving rise to this plea agreement, including any charges of obstruction of justice or attempted witness tampering now known to the United States.

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6. Guidelines Sentence—Joint Recommendation

Pursuant to the Fed. R. Crim. P. 11(c)(1)(B), the United States and the defendant agree to jointly recommend to the Court that the defendant be sentenced within the defendant's applicable guideline range as determined by the Court pursuant to the United States Sentencing Guidelines, as adjusted by any departure the United States has agreed to recommend in this plea agreement. The parties understand that such a joint recommendation is not binding on the Court and that, if it is not accepted by this Court, neither the United States nor the defendant will be allowed to withdraw from the plea agreement, and the defendant will not be allowed to withdraw from the plea of guilty.

7. Base Offense Level

Regarding Count One, pursuant to Fed. R. Crim. P. 11(e)(1)(B), the United States will recommend to the Court that the defendant's base offense level be calculated at 27 pursuant to USSG §2G2.1(a), incorporating guidelines amendments effective November 1, 1998. The defendant understands that this recommendation or request is not binding on the Court, and if not accepted by the Court, the defendant will not be allowed to withdraw from the plea.

Regarding Count Twelve, pursuant to Fed. R. Crim. P. 11(e)(1)(B), the United States will recommend to the Court that the defendant's base offense level be calculated at 17 pursuant to USSG §2G2.2(a), incorporating guidelines amendments effective November 1, 2000. The defendant understands that this recommendation or

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request is not binding on the Court, and if not accepted by the Court, the defendant will not be allowed to withdraw from the plea.

8. Adjusted Offense Level

Regarding Count One and pursuant to Fed. R. Crim. P. 11(c)(1)(B), the United States will recommend to the Court that the defendant's adjusted offense level be calculated at 32, as determined below:

<u>Guideline</u>	<u>Description</u>	<u>Levels</u>
§2G2.1(a)	Base Offense	27
§2G2.1(b)(1)	Specific Offense Characteristic– Victim had not attained the age of 12 years	4
§2G2.1(b)(2)	Defendant was legal guardian or victim was otherwise in the custody, care or supervisory control of defendant	2
§3C1.1	Obstruction of Justice	2
§3E1.1	Acceptance of Responsibility	-3
Total Adjusted Offense Level		<u>32</u>

The defendant understands that this recommendation or request is not binding on the Court, and if not accepted by the Court, the defendant will not be allowed to withdraw from the plea.

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Regarding Count Twelve and pursuant to Fed. R. Crim. P. 11(c)(1)(B), the United States will recommend to the Court that the defendant's adjusted offense level be calculated at 30, as determined below:

<u>Guideline</u>	<u>Description</u>	<u>Levels</u>
§2G2.2(a)	Base Offense	17
§2G2.2(b)(1)	Specific Offense Characteristic– Prepubescent minor	2
§2G2.2(b)(2)(B)	Distribution was for receipt of a thing of value not pecuniary	5
§2G2.2(b)(4)	Pattern of sexual abuse of a minor	5
§3C1.1	Obstruction of Justice	2
§3E1.1	Acceptance of Responsibility	-3
Total Adjusted Offense Level		<u>30</u>

The defendant understands that this recommendation or request is not binding on the Court, and if not accepted by the Court, the defendant will not be allowed to withdraw from the plea.

9. Acceptance of Responsibility - Three Levels

Notwithstanding the United States recommendation that the defendant receive a two-level upward adjustment in his adjusted offense level for Obstruction of Justice pursuant to §3C1.1, at the time of sentencing, and in the event that no adverse information is received suggesting such a recommendation to be unwarranted, the

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United States will recommend to the Court that the defendant receive a three-level downward adjustment for acceptance of responsibility, pursuant to USSG §3E1.1(a) and (b). The defendant understands that this recommendation or request is not binding on the Court, and if not accepted by the Court, the defendant will not be allowed to withdraw from the plea.

10. Low End

At the time of sentencing, and in the event that no adverse information is received suggesting such a recommendation to be unwarranted, the United States will recommend to the Court that the defendant receive a sentence at the low end of the applicable guideline range, as calculated by the Court. The defendant understands that this recommendation or request is not binding on the Court, and if not accepted by the Court, the defendant will not be allowed to withdraw from the plea.

11. Forfeiture of Assets

The defendant agrees to forfeit to the United States immediately and voluntarily any and all assets and property, or portions thereof, subject to forfeiture, pursuant to 18 U.S.C. § 2253, whether in the possession or control of the United States or in the possession or control of the defendant or defendant's nominees. The assets to be forfeited specifically include, but are not limited to, the following:

- (a) Apple brand MacIntosh Powerbook G3 Series computer, s/n QT9363YJEXW;
- (b) Compaq brand Presario 1200 Laptop computer, s/n 1V09FP4BE5SB;

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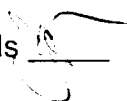
- (c) Compaq brand Presario 5190 Desktop computer, s/n 1X92CGK2212V;
- (d) Apple brand MacIntosh Performa Desktop computer, s/n XA6370YZ95R.

The defendant agrees and consents to the forfeiture of these assets pursuant to any federal criminal, civil, and/or administrative forfeiture action. The defendant also hereby agrees that the forfeiture described herein is not excessive and, in any event, the defendant waives any constitutional claims that the defendant may have that the forfeiture constitutes an excessive fine.

The defendant admits and agrees that the conduct described in the Factual Basis below provides a sufficient factual and statutory basis for the forfeiture of the property sought by the government. Pursuant to the provisions of Rule 32.2(b)(1), the United States and the defendant request that at the time of accepting this plea agreement, the court make a determination that the government has established the requisite nexus between the property subject to forfeiture and the offense(s) to which defendant is pleading guilty and enter a preliminary order of forfeiture. Pursuant to Rule 32.2(b)(3), the defendant agrees that the preliminary order of forfeiture shall be final as to the defendant at the time it is entered, notwithstanding the requirement that it be made a part of the sentence and be included in the judgment.

The defendant agrees to forfeit all interests in the properties described above and to take whatever steps are necessary to pass clear title to the United States. These steps include, but are not limited to, the surrender of title, the signing of a

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consent decree of forfeiture, and signing of any other documents necessary to effectuate such transfers.

Defendant further agrees to take all steps necessary to locate property and to pass title to the United States before the defendant's sentencing. To that end, defendant agrees to fully assist the government in the recovery and return to the United States of any assets, or portions thereof, as described above wherever located. The defendant agrees to make a full and complete disclosure of all assets over which defendant exercises control and those which are held or controlled by a nominee. The defendant further agrees to be polygraphed on the issue of assets, if it is deemed necessary by the United States.

The defendant agrees that the United States is not limited to forfeiture of the property described above. If the United States determines that property of the defendant identified for forfeiture cannot be located upon the exercise of due diligence; has been transferred or sold to, or deposited with, a third party; has been placed beyond the jurisdiction of the Court; has been substantially diminished in value; or has been commingled with other property which cannot be divided without difficulty; then the United States shall, at its option, be entitled to forfeiture of any other property (substitute assets) of the defendant up to the value of any property described above. This Court shall retain jurisdiction to settle any disputes arising from application of this clause. The defendant agrees that forfeiture of substitute assets as authorized herein shall not be deemed an alteration of the defendant's sentence.

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Forfeiture of the defendant's assets shall not be treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty this Court may impose upon the defendant in addition to forfeiture.

B. **Standard Terms and Conditions**

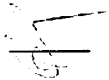
1. **Restitution, Special Assessment and Fine**

The defendant understands and agrees that the Court, in addition to or in lieu of any other penalty, shall order the defendant to make restitution to any victim of the offense(s), pursuant to 18 U.S.C. § 3663A, for all offenses described in 18 U.S.C. § 3663A(c)(1) (limited to offenses committed on or after April 24, 1996); and the Court may order the defendant to make restitution to any victim of the offense(s), pursuant to 18 U.S.C. § 3663 (limited to offenses committed on or after November 1, 1987) or § 3579, including restitution as to all counts charged, whether or not the defendant enters a plea of guilty to such counts, and whether or not such counts are dismissed pursuant to this agreement. On each count to which a plea of guilty is entered, the Court shall impose a special assessment, to be payable to the Clerk's Office, United States District Court, and due on date of sentencing. The defendant understands that this agreement imposes no limitation as to fine.

2. **Supervised Release**

The defendant understands that the offense to which the defendant is pleading provides for imposition of a term of supervised release upon release from imprisonment, and that, if the defendant should violate the conditions of release, the defendant would be subject to a further term of imprisonment.

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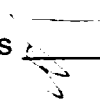
3. Sentencing Information

The United States reserves its right and obligation to report to the Court and the United States Probation Office all information concerning the background, character, and conduct of the defendant, to provide relevant factual information, including the totality of the defendant's criminal activities, if any, not limited to the count(s) to which defendant pleads, to respond to comments made by the defendant or defendant's counsel, and to correct any misstatements or inaccuracies. The United States further reserves its right to make any recommendations it deems appropriate regarding the disposition of this case, subject to any limitations set forth herein, if any.

Pursuant to 18 U.S.C. § 3664(d)(3) and Fed. R. Crim. P. 32(b)(4)(A), the defendant agrees to complete and submit, upon execution of this plea agreement, an affidavit reflecting the defendant's financial condition. The defendant further agrees, and by the execution of this plea agreement, authorizes the United States Attorney's Office to provide to, and obtain from, the United States Probation Office or any victim named in an order of restitution, or any other source, the financial affidavit, any of the defendant's federal, state, and local tax returns, bank records and any other financial information concerning the defendant, for the purpose of making any recommendations to the Court and for collecting any assessments, fines, restitution, or forfeiture ordered by the Court.

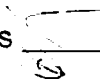
4. Sentencing Guidelines and Recommendations

It is understood by the parties that the Court is neither a party to nor bound by this agreement. The Court may accept or reject the agreement, or defer a

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decision until it has had an opportunity to consider the presentence report prepared by the United States Probation Office. The defendant understands and acknowledges that, although the parties are permitted to make recommendations and present arguments to the Court, the sentence and the sentencing guidelines, if any, applicable to defendant's case will be determined solely by the Court, with the assistance of the United States Probation Office. Defendant understands that the Court is required to consider any applicable sentencing guidelines but may depart from these guidelines under some circumstances. Defendant acknowledges that defendant and defendant's attorney have discussed the sentencing guidelines and defendant understands how the guidelines are applicable to defendant's case. Defendant further understands and acknowledges that any discussions between defendant or defendant's attorney and the attorney or other agents for the Government regarding the potential application of the sentencing guidelines to defendant's case and any recommendations by the Government are not binding on the United States Probation Office or the Court and that, should any recommendations be rejected, and regardless of the guidelines calculated by the Probation Office or the Court, defendant will not be permitted to withdraw defendant's plea pursuant to this plea agreement. The Government expressly reserves the right to support and defend any decision that the Court may make with regard to the defendant's sentence, whether or not such decision is consistent with the Government's recommendations contained herein.

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5. Appeal of Sentence-Waiver

The defendant agrees that this Court has jurisdiction and authority to impose any sentence up to the statutory maximum and expressly waives the right to appeal defendant's sentence or to challenge it collaterally on any ground, including the ground that the Court erred in determining the applicable guidelines range pursuant to the United States Sentencing Guidelines, except (a) the ground that the sentence exceeds the defendant's applicable guidelines range as determined by the Court pursuant to the United States Sentencing Guidelines; (b) the ground that the sentence exceeds the statutory maximum penalty; or (c) the ground that the sentence violates the Eighth Amendment to the Constitution; provided, however, that if the government exercises its right to appeal the sentence imposed, as authorized by Title 18, United States Code, Section 3742(b), then the defendant is released from his waiver and may appeal the sentence as authorized by Title 18, United States Code, Section 3742(a).

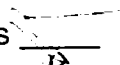
6. Middle District of Florida Agreement

It is further understood that this agreement is limited to the Office of the United States Attorney for the Middle District of Florida and cannot bind other federal, state, or local prosecuting authorities, although this office will bring defendant's cooperation, if any, to the attention of other prosecuting officers or others, if requested.

7. Filing of Agreement

This agreement shall be presented to the Court, in open court or in camera, in whole or in part, upon a showing of good cause, and filed in this cause, at the time of defendant's entry of a plea of guilty pursuant hereto.

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8. Voluntariness

The defendant acknowledges that defendant is entering into this agreement and is pleading guilty freely and voluntarily without reliance upon any discussions between the attorney for the Government and the defendant and defendant's attorney and without promise of benefit of any kind (other than the concessions contained herein), and without threats, force, intimidation, or coercion of any kind. The defendant further acknowledges defendant's understanding of the nature of the offense or offenses to which defendant is pleading guilty and the elements thereof, including the penalties provided by law, and defendant's complete satisfaction with the representation and advice received from defendant's undersigned counsel (if any). The defendant also understands that defendant has the right to plead not guilty or to persist in that plea if it has already been made, and that defendant has the right to be tried by a jury with the assistance of counsel, the right to confront and cross-examine the witnesses against defendant, the right against compulsory self-incrimination, and the right to compulsory process for the attendance of witnesses to testify in defendant's defense; but, by pleading guilty, defendant waives or gives up those rights and there will be no trial. The defendant further understands that if defendant pleads guilty, the Court may ask defendant questions about the offense or offenses to which defendant pleaded, and if defendant answers those questions under oath, on the record, and in the presence of counsel (if any), defendant's answers may later be used against defendant in a prosecution for perjury or false statement. The defendant also understands that defendant will be adjudicated guilty of the offenses to which defendant

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has pleaded and, if any of such offenses are felonies, may thereby be deprived of certain rights, such as the right to vote, to hold public office, to serve on a jury, or to have possession of firearms.

9. Factual Basis

Defendant is pleading guilty because defendant is in fact guilty. The defendant certifies that defendant does hereby admit that the facts set forth in the attached "Factual Basis," which is incorporated herein by reference, are true, and were this case to go to trial, the United States would be able to prove those facts beyond a reasonable doubt.

10. Entire Agreement

This plea agreement constitutes the entire agreement between the Government and the defendant with respect to the aforementioned guilty plea and no other promises, agreements, or representations exist or have been made to the defendant or defendant's attorney with regard to such guilty plea.


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11. Certification


The defendant and defendant's counsel certify that this plea agreement has been read in its entirety by (or has been read to) the defendant and that defendant fully understands its terms.

DATED this 28th day of December, 2005.

PAUL I. PEREZ
United States Attorney


JOHN J. TULIP
Defendant

By:


RONALD T. HENRY
Assistant United States Attorney


LISA CALL, Esq.
Attorney for Defendant


BRIAN M. KANE
Assistant United States Attorney
Chief, Jacksonville Division

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

UNITED STATES OF AMERICA

v.

Case No. 3:05-cr-114-J-25MCR

JOHN J. TULIP

PERSONALIZATION OF ELEMENTS

Count One

1. Do you admit that in or about May 2000, in St. Johns County, you knowingly employed, used, persuaded, induced, enticed or coerced a minor, "F.S." who was then approximately 10 years old, to engage in sexually explicit conduct, that is, the lewd display of his genitals?

2. Do you admit that the purpose of such conduct was to produce visual depictions of such conduct by taking photographs with a digital camera?

3. Do you admit that the visual depictions (digital photos) have actually been transported in interstate or foreign commerce in that they were sent via the internet to a computer in Germany?

Count Twelve

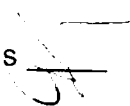
1. On or about February 1, 2001, in St. Johns County, did you knowingly transport and ship or cause to be transported and shipped visual depictions, that is, digital photographs, in interstate or foreign commerce by any means, including by computer?

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2. Do you admit that the production of such visual depictions involved the use of a minor, "F.S.," engaging in sexually explicit conduct, that is, the lewd exhibition of the genitals?

3. Do you admit that such visual depictions are of the minor "F.S." engaged in sexually explicit conduct?

4. Do you admit that you knew that "F.S." in such visual depictions was a minor and you knew the visual depictions were of "F.S." engaged in sexually explicit conduct?

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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

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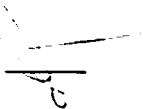
JOHN J. TULIP

FACTUAL BASIS

In May 2000, John J. Tulip, the defendant in the instant case, lived at 6741 Hidden Creek Blvd. in St. Augustine, St. Johns County, Florida. During this time, a young boy approximately 10 years of age, identified herein as "F.S.," came to stay with the defendant for an extended period of time. Sometime during the stay and around May 2000, the defendant persuaded, induced, enticed or coerced "F.S." to pose in the nude for the defendant. The defendant photographed "F.S." in various nude poses including unnatural poses of a sexually inviting or suggestive nature. Some of those poses which were photographed were of sexually explicit conduct in that they depicted lascivious exhibition of the genitals or pubic area of "F.S.," the 10 year old, through close ups showing the child in a semi-aroused state.

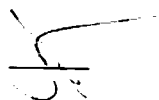
On or about February 1, 2001, the defendant sent the same digital photos of the sexually explicit conduct of "F.S." via the internet to a computer in Germany. The computer belonged to a German citizen and was later seized by police officers with the Landeskriminalamt Nordrhein-Westfalen (LKA), a state police agency. LKA officers sent a copy of the hard drive of the German citizen's computer to agents with

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Department of Homeland Security, Immigration and Customs Enforcement (ICE). ICE Special Agent James Greenmun conducted a forensic computer examination on a copy of the German citizen's computer hard drive and found the digital photos of "F.S." which were the sexually explicit conduct as described above.

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